

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAVID MUNIZ and CATHY MUNIZ,

Plaintiffs,

v.

SILVIA VITIELLO and AIR BNB,

Defendants

Case No.

**Removed from:** MONROE COUNTY  
COURT OF COMMON PLEAS

**DEFENDANT AIRBNB, INC.'S NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Airbnb, Inc. (“Airbnb”) hereby gives notice of removal of this action, captioned *David Muniz, et. al., v. Silvia Vitiello, et. al.*, Case No. 2183CV23, from the Monroe County Court of Common Pleas to the United States District Court for the Middle District of Pennsylvania. Pursuant to 28 U.S.C. § 1446(a), Airbnb provides the following statement of the grounds for removal:

**BACKGROUND**

1. On April 5, 2023, Plaintiffs filed their Complaint, which is attached hereto as **Exhibit 1**. Compl. at 1.
2. Airbnb received the Complaint on April 18, 2023, via U.S. mail. A Declaration in Support of Removal is attached hereto as **Exhibit 2**. Decl. ¶ 3; *see* Pa. R. Civ. P. 403 (“Service is complete upon delivery of the mail”). Under 28 U.S.C. § 1446(a), a copy of all process and pleadings served on Airbnb is attached hereto as Exhibit 1.
3. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it has been filed within 30 days of Plaintiffs’ service of the Summons and Complaint on Airbnb.

**VENUE AND JURISDICTION**

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(a), 1391, 1441(a), and

1446(a) because the Monroe County Court of Common Pleas, where the Complaint was filed, is a state court within the Middle District of Pennsylvania.

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because (1) there is complete diversity of citizenship between Plaintiffs and Defendants; (2) the amount in controversy exceeds \$75,000, exclusive of interests and costs; and (3) all other requirements for removal have been satisfied.

**I. THERE IS COMPLETE DIVERSITY OF CITIZENSHIP BETWEEN PLAINTIFFS AND DEFENDANTS.**

6. There is complete diversity of citizenship here because both Plaintiffs are citizens of New York, Defendant Silvia Vitiello is a citizen of Pennsylvania, and Defendant Airbnb is a citizen of Delaware and California. The diversity requirement is satisfied where, as here, an action “is between . . . citizens of different States.” 28 U.S.C. § 1332(a)(1).

7. On information and belief, Plaintiffs David Muniz and Cathy Muniz are domiciled in New York and therefore citizens of New York. Comp. ¶ 1; *see Lincoln Ben. Life Co. v. AEI Life, Inc.*, 800 F.3d 99, 107 (3d Cir. 2015) (permitting pleading of citizenship on information and belief); *Lewis v. Rego Co.*, 757 F.2d 66, 69 (3d Cir. 1985) (same).

8. On information and belief, Defendant Silvia Vitiello is domiciled in Pennsylvania and therefore a citizen of Pennsylvania. Compl. ¶ 2; *see Lincoln Ben. Life Co.*, 800 F.3d at 107; *Lewis*, 757 F.2d at 69.

9. For purposes of diversity jurisdiction, a corporation is “a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

10. Airbnb is a Delaware corporation. Decl. ¶ 2. Airbnb’s principal place of business is in California. *Id.*; Compl. ¶ 3. Therefore, Airbnb is a citizen of Delaware and California.

## II. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.

11. “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014). “Unless it appears to a legal certainty that the claim set forth in the complaint is for less than the jurisdictional amount, the amount in controversy requirement is deemed satisfied.” *Bryfogle v. Carvel Corp.*, 666 F. Supp. 730, 732 (E.D. Pa. 1987) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). “[W]hen a defendant seeks federal-court adjudication, the defendant’s amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.” *Dart Cherokee Basin Operating Co.*, 574 U.S. at 87.

12. Here, Plaintiffs allege that they “suffered bodily injuries, severe pain and suffering, medical expenses, and the loss of life’s pleasures in the past, present, and into the future” as a result of carbon-monoxide exposure and seek monetary damages therefor. Compl. ¶¶ 69, 80, 101, 112; *see also id.* ¶¶ 75, 107 (alleging “extensive non-economic damages”). Plaintiffs also allege that their damages exceed the threshold below which arbitration is mandatory, *id.* ¶¶ 82, 114, meaning that their requested damages exceed \$50,000, *see Monroe Cnty. R. Civ. P. 1301(1)*.

13. “As the plaintiff[s] allege[] to have suffered serious injuries and seek[] related damages, . . . it is not legally certain the amount in controversy is less than \$75,000. Thus, the amount in controversy requirement is satisfied.” *Pickett v. Target Corp.*, 2021 WL 5163220, at \*2 (M.D. Pa. Nov. 5, 2021) (citation omitted).

**III. ALL OTHER REMOVAL REQUIREMENTS ARE SATISFIED.**

**A. All Properly Joined and Served Defendants Consent to Removal.**

14. For purposes of removal based on diversity jurisdiction under 28 U.S.C. § 1332(a) and pursuant to 28 U.S.C. § 1446(b), all defendants who have been properly joined and served must consent to removal. Defendant Silvia Vitiello consents to this removal.

15. By filing this Notice of Removal, Airbnb does not waive any defense that may be available to it and reserves all such defenses. If any question arises as to the propriety of the removal to this Court, Airbnb requests the opportunity to present a brief and oral argument in support of its position that this case has been properly removed.

**B. Notice of Removal.**

16. Pursuant to 28 U.S.C. § 1446(d), Airbnb will give written notice of the filing of this Notice of Removal to all adverse parties of record in this matter, and will file a copy of this Notice with the clerk of the state court.

**CONCLUSION**

WHEREFORE, Airbnb hereby removes this action from the Court of Common Pleas, Monroe County to the United States District Court for the Middle District of Pennsylvania.

Dated: May 18, 2023

Respectfully submitted,

BABST, CALLAND CLEMENTS AND  
ZOMNIR, P.C.

By: /s/ Christina Manfredi McKinley

Christina Manfredi McKinley, Esq.

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*Attorneys for Defendant*

*AIRBNB, INC.*

# EXHIBIT 1

# EXHIBIT 2

# EXHIBIT 3

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DAVID MUNIZ and CATHY MUNIZ,

Plaintiffs,

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Defendants

IN THE COURT OF COMMON PLEAS  
OF MONROE COUNTY,  
PENNSYLVANIA

Civil Action No. \_\_\_\_\_

**NOTICE OF FILING OF REMOVAL**

PLEASE TAKE NOTICE that Defendant Airbnb, Inc. , by and through its undersigned counsel, has filed a Notice of Removal in the United States District Court of the Middle District of Pennsylvania, [insert] Division, thus effecting removal of this case to the District in accordance with 28 U.S.C. § 1446(d). A copy of the Notice of Removal is attached hereto as **Exhibit A.**

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446, the filing of the Notice of Removal in the United States District Court for the Middle District of Pennsylvania, \_\_\_\_ Division, together with the filing of that Notice with the Prothonotary of this Court, effects the removal of the above-captioned case to the District Court, and this Court may proceed no further unless and until the case is remanded.

PLEASE TAKE FURTHER NOTICE that the Prothonotary of this Court is requested to promptly deliver to the Clerk of the Court of the United States District Court for the Middle District of Pennsylvania all papers now in the original Court file.

Dated: May 18, 2023

Respectfully submitted,

BABST, CALLAND CLEMENTS AND  
ZOMNIR, P.C.

By: /s/ Christina Manfredi McKinley

Christina Manfredi McKinley, Esq.

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*AIRBNB, INC.*

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

May 18, 2023

/s/ Christina Manfredi McKinley

Christina Manfredi McKinley

**CERTIFICATE OF SERVICE**

I hereby certify that, on May 18, 2023, I caused to be served a true and correct copy of the foregoing NOTICE OF REMOVAL via United States mail on:

John E. Lavelle, Esq.  
PA Bar I.D.: 315154  
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/s/ Christina Manfredi McKinley